

Regarding opposition to SEC's finders proposal. Submitted by:

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I have been registered individually since 1981, and in 1993 I acquired March Capital Corp.. This time reference gives me some real life perspective on many of the issues surrounding the SEC's initiative to give unregistered finders a vastly easier path to assisting issuers in capital raises, than that afforded those of us who operate under your regulation.

Through the course of my career I raised early or start-up capital for a number of businesses that were not bad ideas, and were not incompetent founders, but still failed. Capitalism is a blood sport. But I have long believed that it is essential for the future of our economy to capitalize a lot of new ideas for businesses and jobs, as the odds against success are daunting. So there was a degree of "mission" in trying to assist entrepreneurs with good ideas.

More than a decade ago I also assisted four businesses that continue in operation and now employ over 3000 people. Three of the four were essentially new ideas. Almost by definition, new ideas are a challenge to get funded. All were sold to accredited angel investors. And in three of the four, the angels are doing pretty well. One of the four is among the most successful in its industry, if global operations, repeatedly producing award winning products, and a dominant name in any measure. Yet the angels who were subscribed through my efforts were still wiped out. It could be done, so right or wrong, it was done. So even if an idea turns into a great success, start-up investors can still face significant hurdles to realize a fair return for the extreme risk they take. In those situations, it can be advantageous to the angels if the SEC/FINRA BD who sold them their units or interests is there to reach to for some measure of help.

I open with these comments because they inform my perspective on what appears to be the utter lack of recognition by SEC of what it means to be a broker dealer that attempts to accomplish the delivery of services that your finders proposal is alleged to better serve. What I have read gives the impression of a SHOOT, AIM, READY proposal. While it is a pleasant surprise to find SEC now seems to care about more funding for start-up issuers, it is disappointing (stunning? insulting?) to see the finder solution you present. From the BD end of the relationship, if you mandate unregulated finders it makes the overwhelming rules regime under which BDs operate under seem like a vast pretense.

I found this quote from one of the Commissioner's statements pretty instructive on what is at play and what my BD colleagues and I are up against.

"For example, in 2005, the ABA Task Force on Private Placement Broker-Dealers recommended that the SEC work with FINRA and state regulators to establish a simplified system that would allow persons to solicit investors for small issuers, subject to a reduced, but appropriate, level of regulation.[3] "

So who am I, or my BD colleagues, to think we have a perspective at least as relevant as the ABA. The following is the product of my experience and education. My firm does not have in house attorneys. I cannot afford to hire counsel to oppose SEC and the ABA on the finder initiative. But you likely know and count on that. Finding enough time to manage my firm and gather thoughts to make this document anywhere near coherent has been a challenge, so forgive me for its shortcomings. I submit this knowing full well my efforts, and those submitted by my colleagues at other firms, are not going to get much respect from the decision makers at SEC. This has the appearance of a respectable process, but it is an appearance at best. [Side comment: in many ways the asymmetry of my colleagues and me, as an uncoordinated group whose businesses are under attack by SEC and its lawyers, is a mirror image of a group of unrelated angel investors in a growing start-up under cram down assault by a multi-billion dollar VC or PE fund and its high powered law firm.]

So, as it appears after more and more regulations on BDs, and the M&A broker no action letter, SEC is about to launch one more torpedo into the good ships in the "Small BD" fleet, why not shout before more sink?

1. There is a lot of data on IPOs. In order to get to IPO a business has to start-up. Has SEC undertaken any research into how many BD's actually raise start-up capital? Not Silicon Valley billion dollar start-ups (a term which is an aberration in that context), but the real American economy start-ups. And if the percentage of firms that do raise such capital is low, why so few? Has that percentage changed in the past forty years?
2. What is a range, and what is an average amount, of capital typical American start-ups need to commence operations? I cannot find such numbers, but it strikes me as critically relevant information if we are serious about funding the future of American capitalism in a manner which fairly serves the interests of issuers and investors.
3. How many BD's are currently working on raising \$1 million dollar start-up rounds, much less \$500,000? How many such transactions occurred in the past year? Past five years?
4. What was the average size of a capital raise transaction in 2019 executed by SEC regulated BDs? How many of those transactions were for start-ups? This is a shape of the market question. What is really going on in the start-up end of the markets the SEC regulates?
5. What is the cost to a start-up of retaining competent counsel to prepare offering documents that SEC or FINRA will not slam a BD for having distributed to prospective investors?
6. How much exploration has been done into making it less onerous for SEC regulated BDs to do more work in service of what you contend is the objective of getting more capital to issuers?

What was the outcome of that exploration? Would more BDs work the start-up end of the market that the big players will not touch as it is a waste of their time and talent?

7. Has anyone at SEC ever considered how much revenue a BD firm would have generate to be able to afford an in-house full time compliance officer(s), or even external compliance experts? On the matter at hand, ostensibly getting more capital to small issuers, have you ever bothered to consider what it is like to operate a BD that would like to serve more start-up issuers under the current and ever growing regulatory regime?
8. Has SEC or anyone done a projection of how many finders will engage in sourcing capital for issuers? Same question for how many small BD's may be driven from the industry?
9. Do you have any research to indicate just who will be a finder? What skill sets will characterize the finder population? Will it be the insurance agents? Baristas? Uber drivers? Fortune 500 CEO's? Ex-felons? Harvard and Wharton B school grads? Individuals SEC has banished from the securities industry can become finders? Anyone and everyone? Or perchance, will a lot of attorneys, and CPA's now find SEC's finders enablement to be their Relief Act of 2021? Will lawyers who do the documents for an issuer and then act as a finder be required to make any disclosures to the investors about their inherent conflicts, even though SEC says finders cannot express opinions on the documents? Another thought arises. What if a CEO of a billion dollar company acts as a finder of serious money for an unrelated transaction offered by his investment bankers? The CEO introduces one of his golf buddies who invests a few million and the CEO wants a finder's fee from his banker. What disclosures will SEC want the next time the CEO's company engages that investment banker? Of course one might say that is a particularly nonsense hypothetical because what CEO would want any extra money. Forgive me. Maybe there is one. My point is, it is not just the peril to investors presented by incompetent or malevolent finders. There is a second edge to the finder sword of those in high places who will want their cut of the fee pie and there will likely be complications. And my guess is there will be all manner of finder intermediaries at all levels presenting problems none of us can now imagine. It seems clear that after nearly a century of SEC and FINRA handing down regulations and pronouncements to govern my business practices, both still find abundant territory on which to lay down more rules and pronouncements. And in that context you want to enable totally ungoverned finders to do some of the same work we do.
10. What does your research indicate about how many more issuers will be funded by your finder enablement? Will that number of finder funded issuers be greater than it would be if you put equal effort into your already registered BD's having an easier path to accessing funds for issuers? One glaring error in your creation of Capital Acquisition Brokers was failure to include accredited investors as an included capital market. We would opt for CAB instantly if you included business with accredited. SEC is now creating a free fire zone for finders that makes the CAB initiative a bit of a joke. And curious to know, how many BDs opted for CAB status? Did CAB help the industry?
11. If SEC enacts the finders exemption, will SEC and FINRA cease oversight of BD's transactions undertaken in the same manner as finders? You might be able to sell that approach to my BD colleagues and me. At least under that arrangement BDs could compete with your finders by

presenting our credentials and professional orientation as being of value to both the issuers and the investors. Will SEC and FINRA allow us to share fees with finders? .

12. Have you given any thought to a “Defense of Angel Investors” series of regulations? Does SEC understand that a lot of capable and sophisticated investors will not fund start-ups because of not only the inherent business risks but those related to terms associated with growth capital? Perhaps research into the hazards attendant to providing first round capital will be instructive even when a start-up company achieves great success. How well situated will the universe of angels enlisted by your finders be in organizing to fight off the predatory nature of growth capital whose first efforts will be to kill the angels? Issuers who need growth capital will do what is necessary to get funded. The angels will not know each other, share no connection other than their shared investment, and not even have an out-gunned BD to reach out to for any assistance.
13. How does SEC see the capital markets having changed since the 1980’s, just to pick a point in time? How many BD firms have vanished? How many private equity firms existed in 1980? How many venture capital firms? How many hedge funds? The last time I tried to track the differing trajectories I was able to find some data on hedge funds dating back to the late 80’s, and private equity funds a bit later. As I recall the number of hedge and P/E funds had gone up like a sky rocket while the count of BD firms was down about 40%. Is the response to the ongoing demise of small BD firms the creation of a universe of totally unregulated finders?

I am a committed believer in American capitalism. I have in the past frequently put my time where my mouth is and engaged in start-up capital rounds. Over the years, the costs of serving the start-up market, the impact of regulation, the risks of start-ups, have made those engagements less frequent. My first question to issuers who approach me is always, have you exhausted every other source of funds, as engaging an SEC/FINRA regulated BD is very expensive. I say that to issuers with full knowledge that the mal-distribution of wealth in America has undermined the vitality of the primary source of start-up funding -- friends and family capital. There have long been very important challenges to the future of American capitalism and job creation—now magnified by the carnage of the Covid mismanagement. There cannot be too much attention placed on needed change. We have to be better organized as a society to facilitate the development of more business creators, and capital markets that are needed to fund their business creations. I had always accepted the burdens of operating under the regulations as necessary to participate, in some small way, in the response to that capital need. I believe the finder initiative is the wrong response to a pressing need and should not be adopted.